

'92 JUN -9 P2:20

HAWAII CIVIL RIGHTS COMMISSION  
STATE OF HAWAII

LINDA C. TSEU, Executive  
Director, Hawaii Civil Rights  
Commission

Petitioner,

vs.

Respondent.

Docket No. DR 92-004

ORDER SUMMARILY DENYING PETITION FOR DECLARATORY RELIEF

I. INTRODUCTION

On May 1, 1992, Petitioner filed a document entitled "Motion to Summarily Deny, or in the Alternative, to Continue Disposition of Petition for Declaratory Relief" in response to a Petition for Declaratory Relief (DR 92-003) filed on April 29, 1992. On May 8, 1992, Petitioner filed a Motion to Amend the Caption, which sought to have the first document treated as a Petition for Declaratory Relief. In a response filed on May 11, 1992, the Respondent did not object to changing the caption but moved to strike the Petition because it failed to state facts giving rise to the petition or to identify any potential respondents as required by H.A.R. § 12-46-61.

## II. DISCUSSION

The Petition seeks a declaration that the Commission will not consider Petitions for Declaratory Relief arising from a case which is in the pre-hearing stage. The pre-hearing stage refers to the period after a complaint is filed and before the case is docketed by the hearings examiner. Encompassed within this period is the Commission's investigation of the complaint, the Executive Director's determination of reasonable cause, and the final conciliation demand. See, H.A.R. §§ 12-46-12, 14, and 17.

Petitioner sought the declaration because of a concern that references to disputed facts at the pre-hearing stage may violate the rule on ex parte communications, H.A.R. § 12-46-40, and require recusal of the Commissioners if the case subsequently comes before them for a hearing on the merits of the complaint. H.A.R. § 12-46-40 contains a proviso that "the Commission [i.e. the five Commissioners who will decide cases] will not be involved in the pre-hearing stages." H.A.R. § 12-46-35(a)(3) provides for the disqualification of a Commissioner who has "participated in the development of evidence." Petitioner contended that involvement in deciding a pre-hearing stage petition could require Commissioners to make conclusions about disputed facts and constitute development of evidence. Petitioner sought a declaration that the Commission would not hear pre-hearing petitions and proposed other alternative relief, and procedures.

As stated above, Respondent did not oppose the Motion to Amend Caption but moved to strike the Petition on the grounds that

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it did not meet the requirement of H.A.R. § 12-46-61 in that it did not contain a statement of facts or identify potential respondents.

### III. DECISION

The Commission grants the Motion to Amend Caption and will treat the filing as a Petition for Declaratory Relief. The Commission chooses to summarily deny the petition under H.A.R. § 12-46-63(b)(1).

The Commission believes that it has the authority to decide petitions in the pre-hearing stage. The Commission acted upon its belief in deciding DR 92-003 which involved a case in the pre-hearing stage. There is nothing in the rules which explicitly limits the Commission's power to issue declaratory rulings in the pre-hearing stage. Petitioner's concerns about the potential for recusal are well-taken, however, they do not justify the declaration sought.

The Commission will decide cases in the pre-hearing stage if it determines that the petition presents an issue for which a declaration is appropriate. It will make such determinations on a case-by-case basis. The Commission will not limit its declaratory rulings only to cases involving legal issues or to cases which have been docketed for hearing.

### IV. ORDER

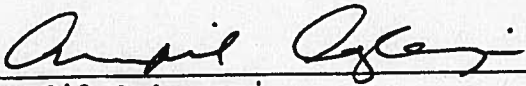
IT IS HEREBY ORDERED THAT the Petition for Declaratory Relief is summarily denied under the authority of H.A.R. § 12-46-63(b)(1).

Petitioner may seek reconsideration under H.A.R. § 12-46-



38 by filing a motion with ten days of receipt of this order. Petitioner may seek judicial review in the circuit court under H.R.S. §§ 91-8 and 14 within thirty days after service of the final decision and order.

Dated: Honolulu, Hawaii, June 9, 1992.

  
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Amefil Agbayani  
Chairperson  
Hawaii Civil Rights Commission